

RENDERED: OCTOBER 6, 2017; 10:00 A.M.
NOT TO BE PUBLISHED

Commonwealth of Kentucky

Court of Appeals

NO. 2016-CA-001300-MR

DAVID GOLDMAN

APPELLANT

v.

APPEAL FROM JEFFERSON CIRCUIT COURT
HONORABLE A.C. MCKAY CHAUVIN, JUDGE
ACTION NO. 15-CI-006029

KENTUCKY UNEMPLOYMENT
INSURANCE COMMISSION; AND
MATTINGLY CENTER

APPELLEES

OPINION
AFFIRMING

** ** * * * * *

BEFORE: ACREE, DIXON, AND JONES, JUDGES.

DIXON, JUDGE: This appeal concerns a judgment rendered by the Jefferson
Circuit Court, which affirmed a decision of the Kentucky Unemployment

Insurance Commission (Commission) denying benefits to David Goldman.¹ After careful consideration, we affirm.

In June 2014, Goldman applied for unemployment benefits after he was terminated from his employment at ResCare. The Division of Unemployment Insurance (Division) denied the claim, and Goldman appealed. While the appeal was pending, Goldman did not continue to claim unemployment benefits. In August 2014, he began a part-time job at the Mattingly Center and started graduate school at Spalding University. The Division approved Goldman's request to be exempt from the work search requirement during his enrollment in graduate school, finding his classes constituted "approved training" pursuant to KRS 341.350(7). Three months later, the Division's appeals branch referee issued a decision reversing the initial determination and finding Goldman eligible for benefits. After the referee's decision became final, Goldman filed an application to reopen and backdate his unemployment claim to obtain benefits for the twenty-six-week period the claim was on appeal. In his application, he listed his employer as the Mattingly Center and "reduction in hours" as the reason for separation; thereafter, Goldman began receiving unemployment benefits.

On January 16, 2015, Goldman resigned from the Mattingly Center due to his school schedule, but requested that he remain eligible to work there.

¹ Appellee, the Mattingly Center, did not participate in this appeal.

The following month, the Division issued a notice of determination denying his application to backdate his claim for benefits as untimely. Goldman appealed the determination, and the referee affirmed. The referee concluded Goldman was ineligible for benefits because he failed to continue claiming benefits biweekly while the appeal was pending. Goldman did not appeal the referee's decision.

In June 2015, when the benefit year expired, Goldman filed a new application for unemployment benefits. Goldman listed the Mattingly Center as his most recent employer and noted he last worked on January 26. Goldman received benefits through July 4, 2015; thereafter, the Division issued two notices of determination that he was disqualified from receiving benefits because an investigation revealed he voluntarily quit his employment at the Mattingly Center.² The documents explained Goldman was obligated to repay \$8146.00 in overpaid benefits for the previous benefit year, and \$834.00 for the current benefit year.³

Goldman appealed the determinations, and an appeals referee conducted an evidentiary hearing on September 23, 2015. Goldman testified on his own behalf, and Whitney Kays, a service coordinator at the Mattingly Center, testified for the employer. According to Goldman, after January 26, 2015, he was

² The Division also imposed penalties for knowingly making false statements to obtain benefits. The penalties were subsequently reversed on appeal to the referee.

³ The Commission ultimately determined the \$834.00 overpayment was attributable to office error and would only be recovered by deducting twenty-five percent of any future weekly benefits payable to Goldman.

willing to work on an as-needed basis for the Mattingly Center and believed he was still considered an employee. Kays testified she received Goldman's resignation letter two weeks prior to his last day of employment. Kays asserted she informed Goldman he was welcome to re-apply for employment in the future, although she could not guarantee a position would be available.

The referee rendered a decision affirming the determination as to the issues of disqualification and overpayment, concluding Goldman voluntarily quit his job at the Mattingly Center. Goldman appealed the referee's decision to the Commission. The Commission affirmed, adopting and modifying the referee's decision with additional factual findings. In its findings, the Commission stated, in relevant part:

When the Claimant reopened his claim in December 2014, he was not separated from the captioned employer [Mattingly Center] and had not yet requested to be placed on 'inactive status.' Therefore, he had no separation to report, but did report he was working part-time hours for the captioned employer as opposed to full-time hours. The claimant erroneously believed his reopened claim was filed against his previous employer and that his previous employer remained chargeable for benefits paid.

. . . The claimant requested he be on 'inactive' status subsequent to January 16, 2015, unless the employer found a client willing to work around the claimant's school schedule. The claimant was also willing to fill in for someone who was absent or unable to attend an assignment on a day and/or time the claimant was available. The employer advised the claimant that he could not be guaranteed any hours and that he was

welcome to reapply when he became available. The employer considered him to have quit the employment.

The claimant mistakenly considered himself still connected to the employer; just inactive. Because he believed he was still connected to the employer, he did not report a 'separation' to the Division.

Goldman sought judicial review of the Commission's decision in Jefferson Circuit Court. The court affirmed, and Goldman now appeals.

"The judicial standard of review of an unemployment benefit decision is whether the KUIC's findings of fact were supported by substantial evidence and whether the agency correctly applied the law to the facts." *Thompson v. Kentucky Unemployment Insurance Commission*, 85 S.W.3d 621, 624 (Ky. App. 2002). It is well settled that substantial evidence exists where, "when taken alone or in the light of all the evidence it has sufficient probative value to induce conviction in the minds of reasonable men." *Kentucky State Racing Commission v. Fuller*, 481 S.W.2d 298, 308 (Ky. 1972).

On appeal, Goldman contends he was eligible for unemployment benefits due to his termination from ResCare.

We have carefully reviewed the record and conclude any allegations relating to ResCare are not properly before us. Goldman appealed the Division's denial of his request to backdate his claim, and the referee affirmed the determination. The referee concluded Goldman was disqualified because he failed

to continue claiming biweekly benefits during the appeal, as required by 787 KAR 1:090 § 3(1). Goldman did not appeal to the Commission; consequently, the referee's decision became final on May 5, 2015.

Next, Goldman points out the Division found his graduate classes constituted "approved training" and excused him from the work search requirement during school, pursuant to KRS 341.350(7). In light of that finding, Goldman contends he was not disqualified from receiving benefits when he left his employment with the Mattingly Center to attend training approved by the Division. Specifically, Goldman relies on KRS 341.350(8), which states, in relevant part:

(8) Notwithstanding any other provisions of this chapter, no otherwise eligible worker shall be denied benefits for any week because he is in training approved under 19 U.S.C. sec. 2296 (Section 236(a)(1) of the Trade Act of 1974), nor shall such worker be denied benefits by reason of leaving work to enter such training provided such work is not suitable employment . . . [.]

Goldman's reliance on KRS 341.350(8) is misplaced because the provision does not apply to him. The plain language of the statute states the provision applies to individuals in training approved under the Trade Act of 1974. "The Act created a program of trade adjustment assistance [TAA] . . . to assist individuals, *who became unemployed as a result of increased imports*, return to suitable employment. The TAA program provides for reemployment services and allowances for eligible individuals." 20 C.F.R. § 617.2 (2017) (emphasis added).

Despite Goldman's argument to the contrary, KRS 341.350(8) clearly did not apply to his claim for benefits; consequently, there was no error in the Commission's decision not to apply the statute.

Finally, we address the Commission's determination Goldman was disqualified from receiving benefits because he voluntarily quit his employment at the Mattingly Center.

KRS 341.370 addresses specific circumstances that disqualify a claimant from receiving unemployment benefits, including when a claimant leaves suitable employment "voluntarily without good cause attributable to the employment." KRS 341.370(1)(c). The Kentucky Supreme Court has recently addressed this provision, recognizing, "[i]nherent in that language is the idea that work conditions must be sufficiently bad that the employee can reasonably feel compelled to quit." *Brownlee v. Kentucky Unemployment Insurance Commission*, 287 S.W.3d 661, 664 (Ky. 2009). The Court went on to note, "separation is voluntarily initiated by the employee when the act of leaving is 'freely given' and proceeds from personal choice and consent." *Id.*

Here, the Commission found that Goldberg tendered his resignation to the Mattingly Center because his work schedule interfered with his graduate classes. The Commission noted Goldman believed he was on "inactive status" at the Mattingly Center after January 16, 2015; however, the employer considered

him to have quit his job and informed Goldman he could re-apply for a position in the future. The Commission concluded Goldman “effectively separated himself from the employment when he requested to be placed on inactive status and removed himself from his regular schedule.” Accordingly, the Commission determined Goldman voluntarily quit his job and was disqualified from receiving benefits pursuant to KRS 341.370(1)(c).

After careful review, we conclude the Commission’s findings of fact were supported by substantial evidence, and the Commission correctly determined Goldman was not entitled to benefits because he voluntarily left his employment. The circuit court properly affirmed the Commission’s decision.

For the reasons stated herein, we affirm the judgment of the Jefferson Circuit Court.

ALL CONCUR.

BRIEFS FOR APPELLANT:
Nathan Goldman
Louisville, Kentucky

BRIEF FOR APPELLEE
Kentucky Unemployment Insurance
Commission:

Kevin A. Osborne
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No Brief for Appellee
The Mattingly Center